

IN THE OHIO SUPREME COURT

Disciplinary Counsel

Relator,

v.

Eric K. Heiland, JD,

Defendant.

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Case No.: 07 - 1111

Board Case No.: 06-049

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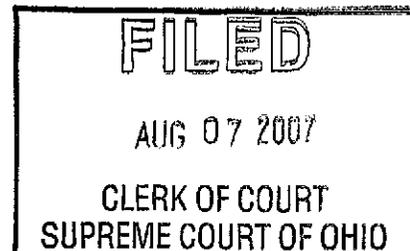
RESPONDENT ERIC K. HEILAND'S OBJECTIONS TO THE FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND THE RECOMMENDATION OF THE BOARD OF  
COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

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**RESPONDENT'S OBJECTIONS TO THE FINDINGS OF  
FACT, CONCLUSIONS OF LAW AND THE RECOMMENDATION OF THE  
BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE**

Pursuant to Gov. Bar R. V §(8)(B), and this Honorable Court's June 28, 2007 Order To Show Cause, Respondent Eric K. Heiland hereby makes the following objections.

**THE PANEL AND/OR BOARD ERRED IN DENYING RESPONDENT'S  
5<sup>TH</sup> AND 14<sup>TH</sup> AMENDMENT PRIVILEGE UNDER THE U.S. CONSTITUTION  
IN ITS FINDINGS OF FACT, CONCLUSIONS OF LAW, AND OTHER  
RECOMMENDATIONS OF PANEL AND THE BOARD OF COMMISSIONERS ON  
GRIEVANCES AND DISCIPLINE**

1. The Amended Answer, at Page 2, Paragraph 7, states, "Amended Complaint violates the Fifth and Fourteenth Amendments to the U.S. Constitution. The last Count of the Amended Complaint has been ruled such in similar cases. Unconstitutional acts or orders are void ab initio and without jurisdiction." This was given to Assistant Disciplinary Counsel before the hearing began.
2. In the hearing transcript Respondent states, page 7, line 7, even before the hearing begins, "I was given the opportunity to make a response to this amended answer or supplemental answer within 20 days from the 9<sup>th</sup> of this month, and that is today. So the answer would be filed – would be being responded to here after the hearing begins. And further from the short bit of research I had since their certified mail went out on the 17<sup>th</sup>, I have not seen it for a very long time. It appears that the last cause of action at the very least, again, is one that the U.S. Supreme Court already ruled as being void and unconstitutional."
3. Respondent made clear that he was objecting to Count 4, Paragraphs 61 to 70 of Relator's Amended Complaint, based upon his privileges under the Fifth and Fourteenth Amendments to the U.S. Constitution, to not produce the requested

financial records or answer questions about them, despite the difficulty of asserting such privileges without the benefit of counsel. For example, Respondent testified, page 317, line 15, to page 318, line 6: “I would briefly state on the fourth count of the amended complaint it’s been difficult for me without having representation. I do not wish to ask questions that were outside the scope of the complaint. I fully intended to comply with what was requested of me. I have afterwards decided that I should assert not to answer questions, and that you draw no conclusions one way or the other from my not following that request or that order in that – in that count. I believed after doing further research that it’s my constitutional right to say that there should be a limit to what inquiries are made regardless of whether good or bad and that I should assert that.”

4. The U.S. Supreme Court held, in Spevack v. Klein, 87 S. Ct. 625 (1967) (385 U.S. 511), Refusal of attorney in disciplinary proceeding to produce demanded financial records [federal tax returns] and to testify at judicial inquiry on basis that production of records and his testimony would tend to incriminate him was not ground for disbarment.
5. Despite the assertion of Respondent of his Fifth and Fourteenth Amendment privilege, the Panel and Board, in its Findings of Fact, Conclusions of Law and Recommendation of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio (hereafter “Recommendation”) found, in Count Four, paragraphs 31 to 35, a Failure to Cooperate, which violated Gov. Bar Rule V. (4)(G). The same conduct involved the aggravating factors in paragraph 37, (C), (D), and (E), and formed an integral part of the reasons for its sanction in paragraph 41 and the

Board's final Recommendation. The sole facts supporting (D), that "There was a lack of cooperation in the disciplinary process," and (E), "Submission of false evidence, false statements, or other deceptive practices during the disciplinary process... [was that] Respondent promised to produce his tax returns, but never did. When asked about his tax returns at the hearing, he refused to answer any questions." Respondent did not have the benefit of Counsel earlier in the disciplinary process, was never warned or notified of his Fifth Amendment privileges at any time in the disciplinary process, and once his Fifth and Fourteenth Amendment privileges were expressed, in the amended Answer and Hearing, they should be respected.

6. In addition, adding Count 4 violated due process, and the governing rules in that this Amendment was made less than thirty (30) days before the hearing, without an explicit showing of good cause, and with far less than twenty (20) days in which to make a response to the Amended Complaint.

**THE PANEL AND/OR BOARD ERRED IN FINDING A VIOLATION OF DR 1-102 (A)(4) FOR COUNT THREE**

7. The sole fact on which the Board found this violation was the title to my IOLTA account, without any requisite purpose, knowledge, or intent.

**THE PANEL AND/OR BOARD ERRED IN IMPOSING A SANCTION OF INDEFINITE SUSPENSION**

8. In determining the appropriate sanction for attorney misconduct, this Court considers "the duties violated, the actual or potential injury caused, the attorney's mental state, the existence of aggravating or mitigating circumstances, and sanctions imposed in similar cases." Cuyahoga County Bar Assn. v. Maybaum, 112 Ohio St.3d 93 (Ohio,

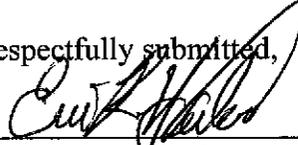
2006), at paragraph 21. Unlike the case of Disciplinary Counsel v. Wise, 108 Ohio St.3d 381 (Ohio, 2006), the Respondent in this case does not have very recent suspensions for additional, and unrelated, ethical violations; overdrafts were one month in 1998; and, excluding the one issue upon which Respondent asserted his Fifth and Fourteenth Amendment privileges, there was, in fact, cooperation and candor throughout the disciplinary process.

9. In Disciplinary Counsel v. Croushore, 108 Ohio St.3d 156 (Ohio, 2006), the Court imposed a twelve-month stayed suspension, with a two-year period of probation and monitoring of his IOLTA account records. In Erie-Huron Counties Joint Certified Grievance Committee v. Miles (1996), \_\_\_\_ Ohio St.3d \_\_\_\_, the Court imposed a one-year suspension. The similarity of these other records cases, or account cases, especially in light of the other errors in this case, warrants a much less expansive sanction for Respondent.
10. The Board's Recommendation lists the one misdemeanor offense as a mitigating factor, but then treats it, in its Conclusion, as if it were an aggravating factor. Further, in the list of aggravating factors, "factors" are listed with almost no supporting facts. For example, in paragraph 37, (B), "A pattern of misconduct," and (C), "Proved multiple offenses," all come out of one course of conduct, and are never really explained or described.

**CONCLUSION**

WHEREFORE, Respondent hereby requests that this Most Honorable Court stay any part of any suspension imposed, and shorten any suspension it might impose, and for any other relief in law or equity deemed appropriate.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of this document was sent, by regular U.S. Mail and/or by fax, to Joseph M. Caligiuri, Asst. Disciplinary Counsel, 250 Civic Center Drive #325, Columbus, OH 43215-5454, fax number (614) 461-7205, on the 7th day of August, 2007. A second copy of this document was sent, by regular U.S. Mail and/or by fax, to Jonathan Marshall, Secretary to Board of Commissioners on Grievances and Discipline, Supreme Court of Ohio, 65 South Front Street, Fifth Floor, Columbus, OH 43215-3431; phone number (614) 387-9370, fax number (614) 387-9397.



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